

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

SELECT COMMITTEE ON REDISTRICTING

Call to Order: By **CHAIRMAN DEBBY BARRETT**, on February 1, 2003 at 8 A.M., in Room 455 Capitol.

ROLL CALL

Members Present:

Rep. Debby Barrett, Chairman (R)
Rep. Joey Jayne (D)
Rep. Michael Lange (R)

Members Excused: None.

Members Absent: None.

Staff Present: Prudence Gildroy, Committee Secretary

Please Note:

These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 258, 1/31/2003
Executive Action: SB 258

HEARING ON SB 258

Sponsor: SEN. FRED THOMAS, SD 31, Stevensville

Proponents: None.

Opponents: Joe Lamson
Brad Martin, Executive Director Democratic Party
Brad Martin, Executive Director Democratic Party
Don Judge

Opening Statement by Sponsor:

SEN. FRED THOMAS, SD 31, Stevensville, opened on the SB 258. He stated the bill corrects the situation created by the apportionment commission playing politics with the assignment of holdover senators. The Constitution is silent on the aspect of holdover senators; the legislature allows the abdication of that work to be done by the Apportionment Commission. The bill gives the assignment of holdover senators to the legislature. He noted there would be arguments heard that the courts have held the Montana Constitution grants exclusive power to the Districting and Apportionment Commission and the legislature is trying to usurp authority from the Commission. The **Chief Legal Counsel** of the legislature, **Greg Petesch**, previously testified the Commission does not have the express authority to assign holdover senate members to districts. The legislature is delegated the authority in the bill, not usurping the authority of the Commission. By opposing SB 258, it is the Commission is trying to usurp power from the legislature. He stated there would be arguments that the Commission has been fair with the assignment of holdover senators and that it is only natural that a handful of senators would be unhappy with their district assignments. The bill will rectify the Commission's blatant reassignment of those senators, including **SEN. JOHN BOHLINGER, SEN. BRENT CROMLEY AND SEN. SHERM ANDERSON**. Refuting the argument that the 1972 Constitutional Convention established the districting plan so that the legislature would not waste valuable public time on this issue, he held that righting the wrongs of the districting and apportionment Commission was not a waste of time, but was giving a fair voice to the Montana voter. The intention of the Constitutional Convention was to have a commission that was fairly establishing redistricting plans. He felt the commission has not done that duty fully and that SB 258 establishes a way to reign in the partisan behavior of this Commission.

Proponents' Testimony:

None.

Opponents' Testimony:

Joe Lamson, representing himself, advised in the whole process from start to finish dealing with the actual hearings on the plan and hearings on HB 309 and SB 258, the public notice process has been very poor. There has been lack of notice, change of rules, and change of times and rooms. He noted the committee was supposed to meet upon adjournment. He argued that SB 258 was unconstitutional because inherent in the Commission's submission of a plan, they cannot submit a full plan without the orderly

transfer of the senators and identifying which of the 25 districts have to be carried over. If that was not done there would be chaos. He reasoned that the power of the bill could be reserved into the future. When **Mae Nan Ellingson, Constitutional Convention Delegate**, spoke in the hearing the previous day, she made the point that the Commission is doing their duty when they submit the whole plan; the legislature may make modifications to the process but not this particular plan. It is a retroactive usurpation of the Commission's constitutional duty. He noted that people of good purpose and minds can disagree but people on both sides of the issue have been wrong in terms of constitutionality. In terms of being fair to holdover senators, he felt it important to realize that only two of 25 assignments are being contested by holdover senators. He pointed out a flaw in the mechanism in the bill--there would be problems with population decreases in trying to assign senators according to which district people voted for them in and residency. There would be too many senators and not enough districts. An example would be in assigning **SEN. JON TESTER** and **SEN. JERRY BLACK**. **SEN. TESTER** would be in **SEN. BLACK'S** district as that is where he lives and where the majority of the people voted for him. **SEN. BLACK** testified before the Commission that he was very happy with his assignment. If the Commission was being "mean-spirited" and "devious" in their plans, they could have kept **SEN. GARY PERRY** where he was and he would have been precluded from running in that particular district. **SEN. KEITH BALES** also had a problem in terms of where he lived and the Commission amended the plan. The bill creates structural problems for future legislatures similar to the term limits situation where people tried to correct a perceived wrong that incumbency was the problem. Things shifted around and people that were minority parties became majority parties and didn't particularly care for the term limits problem. The bill would set up a situation where the house and the senate will decide on the holdovers--a prescription for deadlock, he contended. Even if the two bodies are of the same party, there have been fights between the House and Senate over what would be done. There is no provision for what happens if those two bodies can't decide who those holdovers are. The bill is contrary to the intent of the Constitutional Convention delegates to have the legislature deal with the issue very quickly, within 30 days, and then move on with their business. With this bill that can drag on as the two houses or parties fight over who the holdovers will be. He did not think that was the intention of the delegates or good for the state of Montana. He noted senators could submit recommendations to the Commission and a law that sets up a system of gridlock is not needed.

Brad Martin, Executive Director Democratic Party, opposed SB 258 and echoed the remarks of **Mr. Lamson** on the public process and

felt the legislature needs to try for the best possible public process. He advised the Constitution clearly defines the appropriate entity to deal with matters involving redistricting, including the assignment of holdover senators. He was a staffer in 1993 legislature and worked for former **SEN. GREG JERGESON**. He watched the redistricting process and was sure the Democratic majority at that time would have liked to have had more of a say in the way holdover senators were assigned. They believed the Commission was highly partisan and highly stacked against the interests of Democrats. They looked at the Constitution and found the process was clearly defined and one they needed to support regardless of its outcome. He raised the gridlock issue and how the issue had held up the process in this legislature. He could not imagine that process further encumbered by bringing the entire assignment of senate districts as a new duty of the legislature. The Commission met, made decisions and now there was another constitutional end run. He believed it was in poor form. Every effort has been made to try to make the process as fair as possible within natural limitations. He believed the districts were assigned fairly and for the legislature to take this end run in the final hours is the highest outrage. This could have been anticipated and a constitutional amendment could have been put on the ballot. Now it was being done in the final hours as the Commission is about to end the work it was assigned when it is really too late for them to deal with the changes. He felt all of the arguments connected to the reapportionment process seemed to be connected to an assumption that all of Montana is Republican and that it is preordained--so it is impossible that the work of the Commission could not be accurate and fair in the assignment of holdover senators or any of its other work. He believed the results of legislative races in the last four elections offer very strong evidence to the contrary. He believed the reapportionment Commission in 1990 was highly partisan and assigned districts that clearly disadvantage the Democratic Party. In the last election the democrats won back fourteen seats lost to the reapportionment process because they decided not to assume that any of those districts belong to any political party. The electorate will decide election outcomes; the electorate does not want the legislature to decide the districts that they get to elect senators from, he held.

Don Judge, representing himself, said he appreciated the concerns of the legislature about the reapportionment process and wished those concerns had been addressed by the Montana Republican Party months ago so that they could have engaged in the process as it was ongoing. He noted the Executive Secretary of the Republican Party is now gone and didn't know if this had any relationship to his decision to leave or not, but they were remiss in not taking action. Now there is an effort to make changes constitutionally and otherwise in the work of a Commission that was set up in the

1972 Constitutional Convention. He noted he has been involved in the process longer than anyone in the room with the possible exception of **Joe Lamson** who may have started about the same time he did in 1973. They have watched the legislative process since then. He became clearly aware in two committee hearings the previous day how much power and influence lobbyists now hold over the Montana legislature--when he sits in a committee hearing and recognizes that committee members don't understand even the minimal basics of things like unemployment compensation, workers compensation and the changes in the coal severance tax, etc. Those were arguments made against term limits when term limits were proposed.

CHAIRMAN DEBBY BARRETT asked him to stick to the bill.

Mr. Judge advised this portends problems similar to term limits and portends gridlock. The process is in the law now. The legislature should make recommendations now to the Commission that should have been made months ago by the Montana Republican party and see how the Commission responds. He did not think Montanans would like tinkering with the Constitution. He encouraged a do not pass motion.

Informational Testimony:

None.

Questions from Committee Members and Responses:

REP. JOEY JAYNE asked who has the authority at this time to assign holdover senators.

SEN. THOMAS indicated there was no granted authority in any statute or in the constitution specifying who will do that.

REP. JAYNE asked how the previous Commission dealt with the issue since in his opinion there is no clear granting of this authority to any one body.

SEN. THOMAS advised that in the past the legislature has abdicated that duty to the apportionment Commission.

REP. JAYNE asked if that was the case, because the Commission had that power in 1990, they would continue to have that power because that power has not been taken away from them.

SEN. THOMAS advised they never had that power--it was just something that they did. There is no statute or constitutional provision that grants them the ability to do that.

REP. JAYNE asked if he would agree that the decision of the 1990 Commission was illegal.

SEN. THOMAS said he had no quarrel with what the Commission has done in the past.

REP. JAYNE noted the recommendation by **Mr. Lamson** that there was an open door at this time for the Commission to reconsider some of the senator's positions, including the three mentioned and asked for his comment.

SEN. THOMAS stated it was his intent to work his hardest to get this legislation passed so, in his assessment, fair, more balanced, non-partisan assignment of holdover senators will be accomplished by the legislature.

REP. JAYNE questioned why no one from the Republican Party came forward to make their recommendations before the legislative session when the plan was submitted.

SEN. THOMAS answered that a lot of Republicans in the state knew that "the fix was in" from this partisan Commission and making recommendations or working on another plan was a waste of time. He could not justify the efforts of the Republican party on the state level. Republicans felt disenfranchised, he said. There were occasions where changes asked by Republicans were accommodated by the Commission. Those changes didn't harm democrat plans to gerrymander the districts or the holdover assignment of senators, he held.

REP. MICHAEL LANGE asked if it was his belief and opinion that the passage of SB 258 is in the best interests of the people of Montana and will further their interests in assuring that assigning the seats of holdover senators is given the fairest and most accurate look possible.

SEN. THOMAS advised the legislation was needed to correct the very partisan assigning of holdover seats by the Commission.

CHAIRMAN BARRETT agreed with **Mr. Martin** that the whole process the Commission used is clearly defined and with **Mr. Judge** when he said we should not tinker with the process, but she was concerned that the current Commission made changes to the criteria and did not adopt the preservation of existing districts as a criteria. That was done by a vote of 3-2. She asked if that was considered "more than fair".

{Tape: 1; Side: B}

Mr. Lamson answered absolutely. He pointed out in his testimony on HR 3 that the analysis provided by **Legislative Services** showed that 100 house districts and 40 senate districts were deeply mal-apportioned because of a 103,000 population increase. It would have been fraud to do something that was mathematically impossible. That was the reason the Commission did not adopt that particular criteria. He pointed out that the previous Commission, who dealt with a very small population increase had that criteria and then routinely ignored it. The changes they made were very dramatic. Adopting that criteria would have been in conflict with the mandatory criteria they had adopted as a Commission.

CHAIRMAN BARRETT questioned if he did not consider what the Commission did resulted directly in SB 258.

Mr. Lamson indicated it was hard for legislators of either party to accept changes in districts. He had pointed out the bill was a gross overreaction. Only two holdover senators complained about their district assignment. He pointed out that **SEN. SHERM ANDERSON** lives in Powell County and represents Lewis and Clark County where the majority of the voters are. All those voters are in the district he has been assigned to.

Closing by Sponsor:

SEN. THOMAS closed on the bill. He advised that cheating to justify outcome is not the Montana way. The bill takes a step towards staying traditional in Montana and do the right thing. He found it interesting that the issue of holdover senators has been around for a couple of weeks and there had not been one overture from the Commission regarding accommodating concerns with the districts. He understood that the Commission was meeting on Wednesday, February 5th to file their plan with the Secretary of State. They don't care what the legislature has said about the plan. Plan 300 was drawn long ago and the fix was in--for the first time ever in the state of Montana. He indicated there was nothing retroactive and no constitutional issue in the legislation. He noted the chairman of the Democratic party has stated they are rectifying what was done wrong in 1992, and sometimes people want to revise history to justify their current position. In the 1992 Commission there were 11 substantive votes on the various plans that were presented. Each of those votes were 4-0. There was one vote that was 3-1 and once when the presiding officer had to break a tie vote. All other votes on all other matters were unanimous. That is not a politically driven Commission, he argued. To attack the state's districts for political gain is the worst case of cheating in Montana history, he claimed. If the Commission

wanted to work with the legislature and take comments they had every avenue to do that. He doesn't think they care and the plan is a done deal. SB 258 is of massive importance to Montana voters so people they elected will be assigned in a fair and nonpartisan way.

EXECUTIVE ACTION ON SB 258

Motion: REP. LANGE moved that SB 258 BE CONCURRED IN.

DISCUSSION:

Substitute Motion: REP. JAYNE made a substitute motion TO TABLE.

REP. JAYNE explained that the Commission followed Article IV Section 14 Subsection 4 that clearly establishes the process for redistricting including the assignment of holdover senators. The second reason was that, absent a finding that the Commission does not have the authority to decide holdover senators, this committee must table the bill because the bill usurps the Commission's authority.

CHAIRMAN BARRETT advised there was a non-debatable motion to table.

Vote: Motion failed 1-2 with JAYNE voting aye.

Vote: Motion that SB 258 BE CONCURRED IN carried 2-1 with JAYNE voting no.

ADJOURNMENT

Adjournment: 8:46 A.M.

REP. DEBBY BARRETT, Chairman

PRUDENCE GILDROY, Secretary

GB/PG

EXHIBIT (jdh22aad)